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GREENBLUM & BERNSTEIN, P.L.C.
1950 ROLAND CLARKE PLACE
RESTON VA 20191

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OFFICE OF PETITIONS

In re Application of :
Abiko :
Application No. 09/926,600 :
International Filing Date: May 26, 2000 : Decision on Petition for
Attorney Docket No.: P21273.A08 : Patent Term Extension
For: CR-BASED ALLOY EXCELLENT IN :
BALANCE BETWEEN STRENGTH AND :
DUCTILITY AT HIGH TEMPERATURE :

The above-identified application has been forwarded to the undersigned for consideration on the "Petition For Patent Term Extension Under 37 CFR 1.181 and MPEP 2720," which was received on July 27, 2005, requesting a patent term extension of 547 days. See 35 U.S.C. § 154(b) and 37 C.F.R. § 1.701.

The petition under 37 CFR 1.181 is granted-in-part.

Petitioner notes that the Notice of Allowance dated May 27, 2005, in the above-identified application did not indicate a patent term extension. The above-identified application was filed on May 26, 2000, and a Notice of Appeal was filed on September 4, 2003. On October 7, 2004, the Board of Patent Appeals and Interferences (BPAI) affirmed-in-part the decision of the examiner and the request for rehearing was finally denied on March 3, 2005. Petitioner argues that the application is entitled to a 547-day patent term extension for the period from September 4, 2003 to March 3, 2005.

Issue of the above-identified application was delayed due to appellate proceedings before the Board of Patent Appeals and Interferences, and the above-identified application has been allowed pursuant to a favorable decision by the Board.

A Notice of Appeal was filed in the above-identified application on September 4, 2003. On September 29, 2004, the Board of Appeals and Interferences affirmed-in-part the decision of the examiner in the above-identified application. On November 29, 2004, Petitioner requested rehearing of the decision of the BPAI. On March 3, 2005, the BPAI denied the request for rehearing. Since the above-identified application was filed after June 7, 1995, there is no terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review, and issuance of the application as a patent was delayed due to appellate review resulting in a reversal of an adverse decision of patentability, the patent to issue from the application is entitled to an

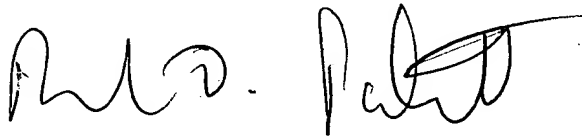
extension of the patent term. The period of delay in the above-identified application is the period beginning on September 4, 2003, the date that the Notice of Appeal was filed, and ending on September 29, 2004, the date of the final decision in favor of the applicant. Three years after the effective filing date of the application is May 26, 2000. Accordingly, the period of extension is not required to be reduced pursuant to 37 CFR 1.701(d)(1) by the amount of time prior to three years after the filing date of the application. As a result, the period of extension is 392 days, the period from September 4, 2003 to September 29, 2004, including the beginning and end dates.

With respect to Petitioner's argument that Petitioner should receive additional patent term extension because the decision of the BPAI was not final until the mailing of the decision on the rehearing on March 3, 2005. The decision on Rehearing was denied, thus it was not a favorable decision. 37 CFR 1.701(a)(3) provides patent term extension ending on the date of a final decision in favor of the applicant and the decision in favor of applicant was the decision by the BPAI on September 29, 2004. The decision on the request for rehearing was not in favor of applicant.

After mailing of this decision, the application will be forwarded to the Office of Publications for issuance of the patent. The patent, if issued, will include an indication that the patent term is extended by **392 days**.

Petitioner's deposit account has not been charged a petition fee.

Telephone inquiries with regard to this communication should be directed to Mark O. Polutta at (571) 272-7709.

A handwritten signature in black ink, appearing to read 'Mark O. Polutta', with a stylized flourish at the end.

Mark O. Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy